

Award No. 10597

Docket No. PM-11907

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF SLEEPING CAR PORTERS

THE PULLMAN COMPANY

STATEMENT OF CLAIM: * * * for and in behalf of Richard Johnson, who is now, and for some years past has been, employed by The Pullman Company as a porter operating out of the St. Louis District.

Because The Pullman Company did, through Superintendent W. H. Bradfield on February 2, 1960, take disciplinary action against Porter Johnson by giving him an actual suspension of five (5) days from the service without pay.

And further, because the charge against Porter Johnson and upon which he was penalized was not proved beyond a reasonable doubt as is required by the rules of the Agreement between The Pullman Company and Porters, Maids, Attendants, and Bus Boys employed by The Pullman Company, represented by the Brotherhood of Sleeping Car Porters.

And further, for the record of Porter Johnson to be cleared of the charge in this case, and for him to be reimbursed for the five (5) days pay lost by him as a result of this unjust action.

OPINION OF BOARD: Porter Richard Johnson was assigned in Line 3731, Car EAGLE DIVIDE, Lake Charles, Louisiana, to St. Louis, Missouri, September 23-24, 1959, MP Train 132-32, operating as an in-charge porter, Lake Charles to Little Rock. Petitioner sets forth that under date of September 24, 1959, Mr. K. M. Converse, Assistant Superintendent, Missouri Pacific Railroad, made a complaint against Porter Johnson that he refused to handle a lady's baggage at Alexandria, Louisiana on September 24, 1959, and on December 21, 1959, he received notice from the Carrier that a hearing would be held on the charge — "You failed to load the baggage of a lady passenger on your car." It appears that a hearing was held and a decision was arrived at by the Carrier finding that the evidence adduced at the hearing substantiated the charge.

It is the contention of the Petitioner that the decision reached by the Carrier is not justified by the evidence, that the evidence, would not

sustain a finding that Porter Johnson was guilty of the charge made against him beyond a reasonable doubt as required by Rule 49.

Carrier conversely insists that there is ample evidence to substantiate the charge, that Porter Johnson had a fair trial and the discipline was warranted.

The only evidence offered at the hearing in support of the charge made against Johnson was that of Assistant Superintendent Converse contained in two written statements. In considering the instant case we must bear in mind that the charge against him, Johnson, was that he failed to load the baggage of a lady passenger.

It appears, conclusively, that Porter Johnson did not know who Assistant Superintendent Converse was, and to him he was a stranger. Furthermore, it did not appear from the record who the lady was that owned the baggage or what her name was or that she ever made any complaint to anyone of any unfair treatment by Porter Johnson in handling her baggage or otherwise. We must assume for the purpose of this review that any substantive evidence given by Superintendent Converse is true. What then does his testimony disclose — (1) that Converse observed some lady's baggage in the vicinity of Porter Johnson's car which from the quality of the luggage and from the stickers on it, indicated to him that she had travelled extensively and that she was a lady of some distinction and prominence; (2) that Johnson loaded the baggage of some male passengers first and left her baggage on the platform or a truck; (3) that Converse then instructed Johnson to put the lady's luggage on the car; (4) that Porter Johnson having failed to respond to Converse's request, immediately, Converse had one of the mail handlers put the lady's baggage on the train.

What must we then conclude from this testimony: (1) the charge in the instant case was not one of insubordination nor could it have been as Porter Johnson did not know who Assistant Superintendent Converse was; (2) whether Johnson was discourteous or not is not important for that is not the charge here; (3) there is nothing in the book of instructions which requires a porter to give preference to one passenger over another on the basis of social prominence or prestige; (4) lastly, Converse having ordered mail handler to put the lady's baggage on the car which the handler did, there no longer remained any occasion for Porter Johnson to put the baggage on the car, which he very well could have done before the train left the Station at Alexandria. For the foregoing reasons we are forced to a conclusion that there was an utter failure of proof to substantiate the charge against Porter Johnson.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1962.